

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: <i>Gross</i>) Art Unit: <i>3629</i>
)
Serial No.: <i>10/771,049</i>) Examiner: <i>Ruhl, Dennis W.</i>
)
Filed: <i>02/02/2004</i>)
)
For: <i>Notification system and method for media queue</i>)

DECLARATION UNDER 37 C.F.R. 1.131

The undersigned, J. Nicholas Gross declares and states that,

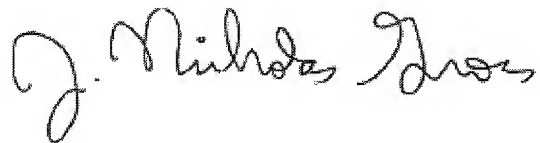
1. I am the sole inventor of the subject matter of the above-captioned U.S. Patent Application.
I am also the attorney of record who prepared and filed the above application.
2. The above application claims priority to provisional application serial no. 60/443,940 filed January 31, 2003. The claims in the present application are all fully supported by the disclosure of the aforementioned '940 provisional application. Thus, they were constructively reduced to practice on such date.
3. Prior to December 16, 2002, I had already conceived of the subject matter of the claims of the present application. This is evidenced by the Exhibit 1 attached hereto, which is a copy of three pages of my notes documenting that aspect of my invention which calls for monitoring a subscriber queue with queue replenishment control rules to determine if an additional playable media item should be added to such subscriber delivery queue.
4. On page 1 of such notes the Examiner can see that I had already developed a full summary of the main features of the invention. There is a reference to Figures 2 and 3a, which appear in their original form as pages 2 and 3 of Exhibit 1 respectively. Page 2 shows that I had conceived of a system for monitoring subscriber queues and providing alerts when they became empty or near empty. The Examiner can compare this figure on this page to final FIG. 2 of the instant application to verify the overlap in content.

5. Similarly page 3 of the Exhibit shows my original formulation of Fig.3a, which illustrates an example of an email notification to a subscriber alerting them to the status of their queue as being empty or near empty. Again the Examiner can see that this figure is essentially the same as that found in FIG. 3a of the instant application.
6. Consequently, the Applicant's conception of such features is well corroborated. The redacted date of Exhibit 1 is prior to December 16, 2002, the only date referenced in the Hunt declaration.
7. I was diligent prior to December 16, 2002 in constructively reducing to practice the invention on January 31 2003. This is evidenced by the following facts: (a) the provisional application filed on January 31 2003 is a substantial document requiring extensive hours of preparation even for an experience patent attorney; it consists of some 49 pages of disclosure and 11 pages of drawings; b) the drafting of such document began prior to December 16, 2002, and continued on a regular ongoing basis thereafter; c) while I have more than 15 years patent prosecution experience, it required me to work quite hard and devote more than 40 hours of time during the intervening 6 week period to compose such disclosure, including figures; d) during such period (December 16 to January 31) I gave at least equal if not higher priority to the drafting of such disclosure as I did other legal tasks requiring my services; e) during such period I also continued to work on my other backlog of unrelated cases in chronological order and handle them expeditiously.
8. The general backlog of work associated with my profession - and others of my peers of similar background, experience and technology practice - typically requires several months of preparation before an application can be filed from an initial disclosure. Under the circumstances, given the size and scope of the '940 disclosure, I submit the inventions therein were constructively reduced to practice extremely diligently.

9. All statements made of my own knowledge are true and all statements made on information and belief are believed to be true; I further acknowledge that wilfull false statements are punishable by fine or imprisonment, or both, under Section 1001 of Title 18, and that such may jeopardize the validity or enforceability of the application and/or any patent issued therefrom.

Executed in Berkeley, California, on June 7, 2007

Respectfully submitted,

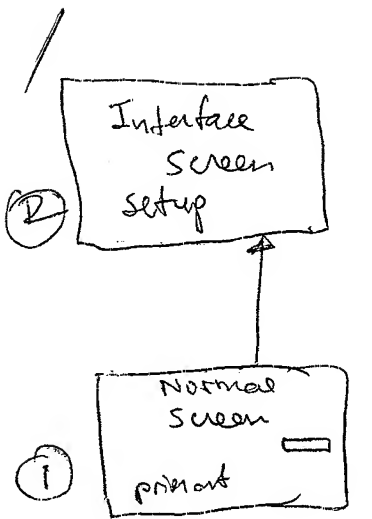
A handwritten signature in black ink, reading "J. Nicholas Gross". The signature is written in a cursive, flowing style.

J. Nicholas Gross
Registration No. 34,175
Attorney for Applicant(s)

June 7, 2007
2030 Addison Street
Suite 610
Berkeley, CA 94704
Tel. (510) 540-6300
Fax (510) 540-6315

EXHIBIT 1

NETFLIX
ENHANCEMENT
19/10/02



Setup preferences

FIG 5?

Selection logic?
(preferences, automatic)

(behind the scenes)

Implement auto-ship
4

FIG 6

Flow chart

From 10/5/02
ideas...

screens

Notice screen

3A

email notice
options

3B

"NEVER HAVE TO CHECK AGAIN.
WE DO THE WORK FOR YOU"
FULL ON! SURVEY

"Keeper"
queue number

Other enhancements:

- change for service
- option left
- conflict w/ scheduled releases?

Notice only

Notice + wait

Notice + auto-ship
immediate

No notice

email in

time confirm

by email + selection

FIG-2

QUEUE KEEPER

PREFERENCES SET UP FOR ~~Auto Queue monitor~~ ~~Auto select~~ & ~~Auto ship~~

Do you want us to automatically notify you when your rental queue is empty (or near empty) and ~~would like us to automatically~~ select and ship a title to you? please fill out the information below, and simply select "finished" to go back to your rental queue

~~Auto~~

- ~~Queue Replenishment Instructions~~
- ~~REPLENISHMENT DIRECTIONS~~
- send WHAT DO YOU WANT ME TO DO WHEN THE QUEUE SHOULD BE REPLENISHED?
- ☐ Notice only
 - ☐ Notice + wait for ☐ my confirmation ☒ for 1 day ☒ for 2 days ☐ for 3 days
 - ☒ Notice and auto-ship
 - ☐ No Notice - Auto ship x may or may not be placed in queue
 - ☐ If I don't respond in days send notice again

WHAT SHOULD I USE TO

~~Queue Replenishment~~

REPLENISH THE QUEUE?

- ☒ Auto recommendation priority ratings
- ☐ New releases
- ☐ Genre (select)
- ☐ Collection
- ☐ Top 100
- ☐ Critic choices

① ~~Queue Replenishment~~ WHEN SHOULD I REPLENISH THE QUEUE?

- ☐ Queue is empty
 - ☐ Queue has ~~space~~ ¹ movie left
 - ☐ Queue has ~~space~~ ² movies left
- A better selection is available than the next to ship in the queue

When Queue Replenishment finds a better title, I want him to ☒ replace the next item to be shipped ☐ put it in the queue in order after my current choice

FINISHED

☒ defaults

FIG-3

FIG 3A

To: John DOE

From: XXX ^{movie} Rentals Q Keeper ☺

Re: ~~URGENT~~ NOTICE

Dear customer,

This is a courtesy notice to inform you that:

~~per your request~~

1) Your shipping queue is empty or near empty;
click here to see its status (have you considered
-----?)

2) Per your request we are shipping ~~you~~ placing ~~after~~
a new title in your queue for shipping. The
title is EEE (click here for more details)

and will be shipped automatically to
you in approximately 1 day unless we hear otherwise
_{or modify}

If you wish to cancel this auto selection/autoship
item, please click here.

Thank you Sincerely,
US